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To:

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**RE: SUBMISSION OF COMPLAINT**

We, **The East Africa Centre for Human Rights (EACHRights)**, lodge a complaint concerning the **Bridge International Academies (BIA)** project, located in **Kenya**.

This complaint is made on behalf of **ourselves** and **eight Kenyan citizens (parents of current or former BIA students, and current or former BIA employees)** to the Compliance Advisor Ombudsman (CAO) regarding violations caused by International Finance Corporation's (IFC) client Bridge International Academies (BIA). **The complainants have been affected by BIA's operations as they violate international and national law as well as IFC Performance Standards 1, 2, and 4.**

The complainants seek this case to be addressed with a **compliance review**, which they believe will **confirm grave violations of the IFC's Performance Standards**. Further, they believe that many of these violations are inherent to BIA's operational model and that it will not be possible to bring the investment into compliance. As a result, the complainants believe that the IFC should divest from BIA.

I/we work in the area known as **Nairobi, Kenya**. I/we can be contacted through the following address, telephone and fax numbers and e-mail:

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EACHRights wishes to disclose its identity for this complaint while representing itself and the other eight complainants. The other eight complainants wish to remain in anonymity.

We have been affected by social or environmental impacts of the project in the ways documented herein.

Yours sincerely,



**Dr. Judith Oloo**  
**Regional Director - The East African Centre for Human Rights**

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## I. Introduction

This complaint is made regarding the International Finance Corporation (IFC)'s investment in NewGlobeSchools, inc., a Delaware-based company which runs Bridge International Academies (BIA or Bridge), a multinational chain of commercial pre-school and primary schools. The IFC announced on January 21<sup>st</sup>, 2014 its \$10 million equity investment in BIA to "support the company's plans to expand to more countries in Africa, where Bridge presently operates, as well as in India".<sup>1</sup> The IFC's Environmental and Social Review Procedure categorized this investment as "Category B" because its potential adverse environmental and social risks were considered limited, reversible and able to be readily mitigated.<sup>2</sup>

The nine complainants submitting this document have been harmed by BIA in various ways, including grave and repeated violations of education, health, and safety standards, lack of transparency, and lack of respect of labour rights. These facts constitute violations of IFC performance standards 1, 2, and 4. The complaint focuses on the operations of BIA in Kenya, where the complainants are based, but some of the issues raised are relevant for the company's operations across the five countries where it currently operates (Kenya, Uganda, Nigeria, Liberia, and India). Examples are drawn from these countries where they confirm the issues raised in Kenya.

### a. *Complainants and advisers*

This complaint is brought forward by nine complainants: the East African Centre for Human Rights (EACHRights) on behalf of Kenya's national interest, and eight individuals who are parents of current or former BIA students of, as well as current or former BIA employees.

EACHRights is an organization established in 2010 to promote, protect, and enhance human rights for vulnerable and marginalized groups. The organization specializes on the right to education, right to health, and child protection.

In the last years, there has been a significant increase in the number of private actors providing education in Kenya especially of the so-called "low-cost" private schools. These schools are diverse and include non-for-profit initiatives, schools supported by faith-based organizations, and commercial actors such as BIA. Since 2015, EACHRights has been monitoring the growing role and human rights impact of these actors with the objective of protecting the rule of law and promoting accountability in education. EACHRights pays special attention to the impact of commercial education providers on low income communities.

As citizens of Kenya, EACH Rights and its staff have been negatively impacted by BIA's systemic and social impact, in particular, BIA's disrespect of the rule of law. The company negatively impacts the Kenyan education eco-system and fundamental principles of law that are of interest to all Kenyan citizens. BIA is the largest commercial provider of education in the region and its negative impacts in countries where it operates such as Uganda, Liberia and Nigeria have been well documented.

The eight parents and teachers live in two counties of Kenya. They wish their identities to remain confidential and have authorized EACHRights to represent them through the process as per the attached documents.

The complainants have received advice from RESULTS Educational Fund and the Global Initiative for Economic, Social, and Cultural Rights in the development of this complaint, and will continue to consult them.

*b. Background*

BIA opened its first school in Kenya in 2009 in Mukuru Kwa Njenga, an informal settlement in Nairobi. According to BIA, by 2013 the company became “the largest network in Kenya, with more outlets than any other business in the country”.<sup>3</sup>

On October 31<sup>st</sup>, 2014, the Ministry of Education in Kenya wrote to all County Directors of Education (CDEs), who represent the Ministry at the county level, regarding the registration status of BIA and stated that the schools should be individually registered after realizing that BIA had failed to register any of its schools. The company had up to that point established about 250 schools, none of which were registered. The CDEs were advised to check that each school:

- was registered individually rather than under a single license;
- taught an approved curriculum; and
- had trained teachers that were registered with the Teacher Service Commission.

Before October 2014, the Ministry of Education was not aware of BIA’s irregular situation in Kenya and was only alerted once the company sought to register pupils for the end of primary national examination (Kenya Certificate of Primary Education or KCPE). The same year BIA went on to plan for expansion into Uganda and Nigeria and opened schools in these countries in 2015.

In March 2015, the Kenya Institute of Curriculum Development expressed concerns and cited various challenges with BIA’s curriculum.<sup>4</sup> By July 2015, BIA had still not complied with registration requirements (Appendix B).<sup>5</sup> In March 2017, the Ministry drew up a roadmap for compliance stating that BIA should create a proper and safe teaching and learning environment, provide adequate and clean sanitation facilities; use approved teaching materials and text books; hire qualified teachers; and have their schools registered.<sup>6</sup>

In March 2016, the government launched the Alternative Provision of Basic Education and Training (APBET) guidelines. Schools in this category are intended to serve communities in urban informal settlements in the cities of Nairobi, Mombasa and Kisumu, and arid and semi-arid areas and are subject to more lenient criteria to facilitate the formalization of the long-standing informal school network. BIA attempted to switch its application status in the hope that it would be considered an APBET institution. In August 2016, the Ministry of Education decided that BIA was not an APBET institution and that it should apply for registration as a private institution.<sup>7</sup> BIA was given 90 days to comply with the set guidelines failure to which they would be closed by November 2016. In June 2017, the Ministry again raised concerns about BIA’s lack of registration (Appendix C).<sup>8</sup>

To this date, BIA schools remain open in Kenya. The Ministry continues to maintain that Bridge can only be registered as a private school once it satisfies the necessary criteria and requirements. It is unclear why the institution remains open despite operating in contravention to the law and regulations. In a similar case in Uganda, BIA schools were closed for failing to meet national standards.<sup>9</sup> In Kenya, the political climate and vested interests have unofficially been named as the most significant roadblocks to enforcement of the law.

*c. Assessment framework*

The following complaint assesses the IFC investment in Bridge International Academies against the IFC's 2012 Performance Standards<sup>10</sup> and the IFC Sustainability Policy.<sup>11</sup>

## **II. BIA's harm on the complainants**

*a. Economic discrimination*

BIA schools are inaccessible to the very poor. Studies in Kenya, Uganda, and Nigeria found that the mandatory fees to attend Bridge schools are significantly higher than those BIA claims (around USD 6 per month or USD 72 – 74 per year). In Kenya, BIA's tuition fees alone ranged from USD 6.40 to USD 10.57 a month in 2016. When adding other mandatory items, such as uniforms, the monthly costs jumped to an average of USD 17.25 per month, or USD 207 per year.<sup>12</sup>

Such amounts have negative impacts on the low-income families BIA purports to serve. Sending three children to a BIA school was calculated to represent between 27% and 34% of the monthly income of families living on USD 1.25 a day, and between 44% and 138% in average for families living in informal settlements.<sup>12</sup>

A recent study<sup>12</sup> found that 58% of BIA students interviewed had missed school due to non-payment of fees. In the same study, over half of BIA's parents interviewed stated that they did not think the very poor in the community could access education at BIA, and 91.5% of BIA's parents admitted that they opted not to send all of their children to BIA because of lack of sufficient funds.<sup>12</sup> Finally, the study found that between 69% and 83% of BIA's parents interviewed had difficulty paying rent, providing food, or accessing healthcare because of BIA's fees. Sixty four percent of interviewees were borrowing money from friends and relatives to afford the fees.<sup>12</sup>

BIA's parents including three complainants have explained the impact of the fees on their lives:

- Complainant 4: "I had some issues with the academy manager. She was doing bad things at the academy, for instance she was expelling children who had a balance of as little as 50 shillings, even if they were candidates [due to sit their end of primary school exam that year]. The school fees are a lot, (...). Parent really struggle to pay school fees and sometimes only have a balance of Kshs.100."<sup>13</sup>
- Complainant 8: "School fees for class 8 is [Kshs.] 5,000 per term, plus a few shillings. The school fees is too much yet there is no feeding programme, which is surprising when you compare the school fees at Bridge with what is charged at other schools in the area. The children are fed small portions yet you've paid 20 or 30 shillings. If you go to other schools such as MCO joy or AIC Zion, school fees are Kshs. 1,000 month and they are eating 'chakula ya maana' [meaningful food]."<sup>14</sup>
- Complainant 2: "When we started in 2012, we were told to tell the parents that the fee would remain at the same level. During training we were told that Bridge was targeting the less fortunate, but every year they have increased the fee and as they increased the fee the pupils decreased. Parents become discouraged but all the blame is on teachers. For ECD, BIA charges more than neighboring schools and so parents shift their children out of the school, because they feel that the head teachers in other schools understand their situation."<sup>15</sup>
- A mother with a 9-year-old child said she found it difficult to make payments: "At times I've gone without eating so I can pay school fees."<sup>16</sup>

The exclusion of poorer children from BIA is not only the results of the fees but also of the strict policy adopted by the company. BIA puts significant pressure on its staff to ensure fees are paid even when it puts families in difficult circumstances. Complainants stated that:

- Complainant 4: “If a parent has arrears and they tell the manager that they will pay, the management does not listen. The class teacher always has a list of those students allowed and those not allowed into class. You as the class teacher you must go through that list and send those not allowed in class to the office. Headquarters has at this point already contacted the academy manger to tell them that all these kids must be sent home. Should the Bridge Quality assurance officer find a ‘not-allowed’ pupil in class then the class teacher and the academy manager are in problems.”<sup>13</sup>
- Complainant 3 mentioned that “Parents are also told to make their payments on a termly basis. But if a parent can only pay Kshs. 1,000 today, then they will be sent to get the remaining amount after 3 days. An exam fee is included in the school fees and is Kshs. 150 per term for the exam. If a parent remains with a balance of Kshs. 250, their child will not be allowed to sit the exam because of the fee balance. We used to be told that if we have only one child in class who has paid their fees, then other children could continue to learn. This has changed drastically. If you are found with a pupil in class who hasn’t paid their fees, then your salary is cut by Kshs.500.”<sup>17</sup>
- One Bridge Academy Manager in Kenya noted: “The company policy is that if you don’t pay, you send them home... They (the parents) are called to school to explain why they have not paid and given some time to pay while children are at home. If they fail to pay, nothing else happens – their chances [to join the school] are terminated”. This was confirmed by independent media inquiries, which described the pressure on poor parents to make their payments on time as “disheartening”.<sup>18</sup>

*b. Discrimination of students with disability*

Respondents on a study suggested that BIA does not generally facilitate or admit children with disabilities and children with special needs and if they did, BIA teachers do not seem to be equipped or supported sufficiently to handle a diverse student population or address diverse needs.<sup>12</sup> One teacher said: “We take all those [students] that have passed. But we don’t accept disabled children”.<sup>12</sup>

*c. Poor quality and lack of compliance with the national curriculum*

BIA’s teachers – who are mostly secondary school leavers without formal teaching qualifications – receive scripted lesson plans on an e-tablet, which they must follow word for word.<sup>12</sup> BIA used to employ people who were not registered as teachers<sup>19</sup> and who had not undergone teacher training in a recognized institution. The complainants pointed to problems with this approach: “The teachers are not trained. They are not equipped to handle especially the little children or even us parents. If you tried to negotiate with a teacher over a delay in school fees they wouldn’t reason with you.”<sup>20</sup>

Bridge’s model of instruction which is deeply reliant on teacher-computers, has rendered pedagogy automated, mechanized, and computerized. As a BIA teacher explained: “We just click and teach the pupils. Tap here and teach the pupils. Just like that, following the scripts”.<sup>18</sup>

One of the complainants commented: “I realized that BIA did not use the same syllabus as other schools by comparing their textbooks with those of other children. The teachers at BIA go door to door to marketing the school. As parents we confronted them about our syllabus concerns, but they didn’t say anything satisfactory. I think they felt intimidated”.<sup>21</sup>

The limits of BIA'S quality of education can also be observed on its operations in Liberia. BIA communicates on the quality of its programs, but this is largely based on misleading or incomplete information. The operations of the company in Liberia, where the chain of schools pumped up to 20 times the amount of money of its competitors and public schools to artificially inflate its test scores, though not reaching very high results,<sup>22</sup> reflects the limits of the quality of Bridge schools.

*d. Violation of the rule of law*

BIA's violations of national and international law affect all citizens of Kenya, including EACHRights staff, who work towards the protection of the rule of law in Kenya. This situation is particularly problematic in countries where BIA operates where the rule of law tends to be fragile. A US-based company operating hundreds of schools illegally for several years in Kenya and other countries in the global South affects citizens' efforts to build accountable systems driven by the law and reflects a problematic neo-colonial approach. This complaint will highlight failure to meet school registration and curriculum requirements as being some of BIAs illegal practices. Additional illegal practices are referred to in other sections.

*i. School registration requirements*

The Basic Education Act, 2013 stipulates that a person shall not offer basic education in Kenya unless that person is accredited and registered as provided for under the Act.<sup>23</sup> The Basic Education Regulations, 2015<sup>24</sup> additionally provides that no person, body or organization shall admit learners to an institution prior to registration.<sup>25</sup>

In Kenya, there is a category of informal schools that is not adequately regulated under the Basic Education Act and Regulations mentioned above. To address this, the Kenyan Ministry of Education launched the Alternative Provision of Basic Education and Training (APBET) guidelines in March 2016.<sup>26</sup> These guidelines aim at facilitating the registration of the many non-formal schools that have operated for years in urban areas. The intention behind this category is to formalise existing non-formal schools that sprang up in the 1990s and early 2000s in response to a rapid demand for education. It is under this category of schools that BIA seeks registration for its academies.

The Ministry of Education has stated that BIA is not an APBET institution and that it should apply for registration as a private institution.<sup>27</sup> The reason cited is that this category is reserved for specific types of schools which owing to poverty, hardship and challenges in the urban informal settlements and other pockets of poverty, cannot meet the registration criteria of the regular public or private institutions.<sup>28</sup>

In March 2016, the Government of Kenya assessed 61 BIA schools and found they should seek registration as private schools and not under the APBET category.<sup>29</sup> The letter established that:

- BIA were private institutions.
- The curriculum being offered was not recommended by KICD.
- The school infrastructure was of poor quality and the classrooms were not of set standards.
- Children were paying fees, lunch money and they also bought school uniform, yet the schools were supposed to help the poor.
- Some of the schools were not in areas that were APBET designated.
- Teachers were relying on lessons pre-prepared elsewhere. In one instance when the tablets failed to work the teachers could not teach.

In another letter in June 2017, the Ministry of Education asked BIA to stop hiding behind the APBET guidelines and to comply with private school registration guidelines.<sup>30</sup> The complainants agree with the Ministry of Education and believe that a multinational company that has existed in Kenya since 2009 with the aim of gaining a market share in education<sup>31</sup> should not fall under the APBET category.

BIA however, continues to seek registration under the APBET guidelines. According to a status report submitted to the Ministry of Education Science and Technology by BIA, 34 out of its 405 schools had received provisional registration under APBET Guidelines as of March 31<sup>st</sup>, 2017.<sup>32</sup> BIA thus continues to operate illegally, running hundreds of schools in direct disregard of Kenya's basic registration standards and domestic laws.

In Western Kenya, the Busia County Education Board decided in November 2014 to close local BIA schools for not complying with minimum education standards, including failure to employ trained and registered teachers and managers, inappropriate facilities, and lack of an environmental impact assessment.<sup>33</sup> After the County Education Board moved to enforce its decision in March 2016,<sup>34</sup> BIA responded by suing the County. BIA lost the court case<sup>33</sup> and in February 2016, the judge upheld the closure of 10 of the 12 schools in the county.<sup>35</sup> The county officers have since taken steps to reallocate the children to public schools and are in the process of closing BIA primary schools, pending the conclusion of the matter in court. The process in Busia is likely to be replicated in other counties in the coming months, as the Busia County Education Board represents the national Ministry of Education and is enforcing national legislation equally applicable across the country.

BIA is also party to other court cases in Kenya, reflecting its litigious relationship with a range of stakeholders and resistance to registration regulations.<sup>36</sup> BIA and its employees were arraigned as accused persons in criminal proceedings where quality assurance and standards officers (school inspectors) sought to close BIA schools that were operating without a registration license – a criminal offence under the law.<sup>37</sup> Similarly, three criminal cases, launched in 2018, are ongoing against three BIA academy managers in Nyeri County. Previously, in 2014, the Nyeri Sub-county Health Officer directed BIA to close its school in Othaya for failing to meet the requisite health and sanitation standards. BIA went to court seeking judicial review orders to quash the directive of the Nyeri Sub-County Health Officer and an order prohibiting the Nyeri District Education Board and the Health Officer from implementing the decision to close. This case collapsed when BIA failed to comply with the timelines stipulated by the law.<sup>38</sup> The above demonstrates a pattern of non-compliance with Kenyan law, even with an issue as serious as health and safety.

In addition, while it is legitimate for anyone to use courts if they believe to not be treated fairly, BIA lost all three of the concluded known cases it is involved in (Busia, Nyeri and Uganda).<sup>39</sup> Consequently, this situation raises concerns that these cases were used merely as delaying tactics to avoid complying with the law.

In the *Loitoktok* case, while the final judgment has not been issued, the court declined to suspend the implementation of the order to close the school pending the hearing and determination of the case. The judge stated that "it would be in the best interest of the children for the suspension of operations to remain in place pending determination of the application."<sup>40</sup>

#### *ii. Curriculum and teacher regulations*

Furthermore, the Basic Education Act requires all private schools to comply with and follow the approved curriculum.<sup>41</sup> The rules are the same for APBET schools. The Basic Education Regulations,

2016, provide that only curricula approved by the Kenya Institute of Curriculum Development (KICD) shall be offered in an institution offering alternative provision of basic education and training.<sup>42</sup> The Kenya Institute of Curriculum Development Act<sup>43</sup> establishes the Kenya Institute of Curriculum Development (KICD) as the body charged with developing, vetting and approving any local or foreign curriculum and curriculum-support materials pertaining to basic learning.<sup>44</sup>

The curriculum BIA uses has not been approved by KICD. The August 2016 letter from the Kenyan Government<sup>45</sup> confirms that the materials and curriculum being used by BIA have never been approved by the KICD, and questions the core of the BIA methodology: the scripted curriculum. According to the letter, the curriculum and materials used in BIA schools have not been licensed because:

- Most of the content taught is not relevant to the Kenyan curriculum objectives;
- The teaching approach the teachers are expected to use is teacher-centered, and the teacher is not allowed flexibility to attend to individual learner needs or adapt lessons to different learning environment(s) and to learners with special needs;
- Lesson plans used are not prepared by the individual teachers as required. These are downloaded a few hours prior to each lesson and are used as such.
- Teachers have no access to previous lessons taught for reference and continuity of lesson presentation.
- Teachers do not prepare schemes of work to plan for their teaching activities.<sup>45</sup>

Finally, the Teachers Service Commission Act (2012) prohibits a person from engaging in teaching service unless registered under the Act.<sup>46</sup>

#### *d. Violation of health and safety regulations*

BIA's school buildings are of a temporary nature with structures built partly of stone using a combination of exposed red brick, corrugated iron for roofing and class partitions, wooden posts for both the building and its doors frames, as well as wire mesh to protect the open window spaces.<sup>12</sup> This type of structure is in violation of several aspects of the Kenyan Safety Standards Manual for Schools. The latter stipulates for instance, that windows should be devoid of grills and should be easy to open.<sup>46</sup>

Local authorities have taken steps to close some BIA schools over the poor health and sanitation standards of its premises. On January 9, 2014 the Sub-County Health Officer for Nyeri South District issued a letter to BIA requiring it to close its school in Othaya Nyeri County for failing to meet the required health standards for schools. BIA's school was located within the vicinity of a slaughter house. Additionally, the Nyeri County Health Board recently moved to close five BIA schools within the county for failing to adhere to health and safety standards required for schools. In the notice sent to the academies,<sup>47</sup> the County Health Department for Nyeri informed BIA's academy managers that their school failed to meet the health and safety standards as they lacked the following:

- Provision of six water closets
- Provision of concrete floors with a smooth finish to all classrooms
- Plastering and painting of the dwarf walls
- Replacement of rickety rafters with appropriate timber roofing
- Provision of a secure perimeter fence surrounding the school
- Provision of a kitchen and dining hall
- Provision of strategic placement of fire extinguishers

- Provision of a playground for the children

As mentioned above, there are currently three ongoing criminal cases against three BIA Academy Managers in Nyeri County. According to the charges read out in court on 21<sup>st</sup> February 2018, have been charged with contravening the Public Health Act by failing to comply with these Statutory Notices issued by the Nyeri County Health Board directing BIA to take necessary measures to meet the standards and requirements relating to health, safety and sanitation.<sup>48</sup> The two other schools appear to have been demolished. Similarly, in Uganda, BIA's lack of respect for health and sanitation standards is part of the motivation for the Ugandan Government to close BIA schools in the country.<sup>49</sup>

The status of BIA's premises has been raised by several concerned parties, including the complainants: A journalist who conducted research on BIA noted: "One of these schools was Bridge Diamond in Mukuru, a slum of 600,000, just east of central Nairobi. The schoolyard fence was made of patched, bent gray metal and barbed wire. The school building itself was shabby and neglected. In the schoolyard, about 30 feet away from where children enter their classrooms, was a deep trench of fetid garbage and rotting bags of feces; when residents can't use the communal latrines, they use "flying toilets" — defecating in a plastic bag and throwing it as far as they can. The chicken-wire windows were rusted and ripped.. Staff members at Diamond were eager to show the poor conditions in their school but also urged me to leave quickly."<sup>16</sup> A BIA teacher described her classroom as "very cold for children". When pupils were asked to suggest improvements for their classrooms, their recommendations centered around facility improvements that would help regulate temperature, as well as other comments on flooring and general cleanliness or tidiness.<sup>49</sup>

Likewise, complaints pointed out the following in regard to BIA's school infrastructure:

- Complainant 6: "The classroom infrastructure also troubled me. The rooms are half stone and half wire mesh, the children are exposed to what is happening outside. I don't think that is an environment that can promote concentration. All the BIA schools I know have been built on land designated for dumping sites."<sup>20</sup>
- Complainant 8: "The schools fence is also not good - small children escape and go and play in the water. There is no way a teacher can teach in class as well as man the fence. The area in front of the kitchen looks like a dumping site."<sup>14</sup>
- Complainant 3: "The structures of the school are bad. There was a time drunkards could pass through the fence, entering the school and you couldn't complain because there was no fence. When we raised the complaint, they said that the number of pupils we have were insufficient to build the fence. So, we talked with the parents and some of them agreed to help us."<sup>17</sup>
- Complainant 7: "The school is located close to a river. It is very dirty. Sometimes you would get smells that waft in that are not very pleasant."<sup>50</sup>
- Complainant 5 raised concerns regarding the sanitary conditions of BIA's schools: "(...) the level of sanitation is poor. The toilets are unhygienic and even more so when it rains since there is open drainage that floods around the toilets."<sup>51</sup>
- Complainant 8 also mentioned a concerning situation with a BIA school caretaker: "The caretaker has also been a problem, anything stolen in the area is hidden in the school. The caretaker also has a relationship with people who sell bhangi (marijuana) and he is given something small at the end of the work day to store these items. I am a human rights defender. Shule isivutiwe bhangi! (the school is not a place to smoke marijuana). This is where he runs his businesses from. He also stores his mkokoteni (cart) in the school. A child was once hit by the mkokoteni and the child bled and the

school didn't sort them out. The caretaker also allows people to pay to use the school toilet. My child, she shares the toilet with strangers! It's like the caretaker owns the school. We do not understand. The caretaker has even threatened the academy manager and he hit the chairman of the Board of Management (BOM) the other day, because we asked him to contribute to the academy given that school desks have gotten spoilt because the caretaker hires it out to a church. When a teacher makes a mistake they are fired, why not the caretaker?"<sup>14</sup>

Another complainant raised concerns regarding the impact of sanitary conditions on the food children are given at BIA's schools: "The food BIA provided for the children was also another problem for me. It was poorly cooked and the quantity so little. I remember my children would often get sick and I think it was from it."<sup>51</sup>

#### e. *Intimidation of stakeholders*

BIA creates a climate of fear around its operations, which affects parents, teachers, staff and citizens. BIA has in several instances used the courts to sue over defamation. However, these attempts to obtain gag orders have all failed as BIA has lost these cases so far. Because of these actions, the complainants believe that BIA is using the Kenyan courts to bully and silence critics and competitors. This situation affects not only the involved individuals and organizations, but also creates a climate of fear that is damaging at the national level as it undermines the right to freedom of expression at a crucial time in Kenya.

The following cases describe situations where Bridge has sued different Kenyan stakeholders seeking to apply pressure on them:

- *Bridge International Academies v Kenya National Union of Teachers & 1 other.*<sup>52</sup> BIA sought a gag order to prevent Wilson Sossion (the Kenya National Union of Teachers' (KNUT) Secretary General) and any KNUT official from publicly mentioning BIA while waiting for the hearing and conclusion of a defamation suit.<sup>53</sup> BIA was suing Wilson Sossion and KNUT for defamatory statements. BIA built its case around reports that allegedly mentioned BIA in a negative light and that could possibly lead to their closure. BIA claimed they were not given the opportunity to comment on these reports. The court however ruled that the matters in question were in the public domain and that education is a matter of public concern, therefore BIA could not claim to have been injured by comments made about this subject. KNUT and its Secretary General are a major stakeholder in Kenya's education sector and the court's ruling validated their right to comment on issues concerning BIA. Further, Education International (the global federation of teacher unions) unanimously adopted a resolution against BIA, accusing it of intimidation of KNUT and its Secretary General.<sup>53</sup>
- *Bridge International Academies v James Momanyi*<sup>54</sup>. In this ongoing case, BIA sued a journalist for defamation in an article he authored titled "*State must monitor operations of donor funded academies*" where it stated inter alia the following: "The assertion is merely a marketing gimmick to hoodwink poor parents and gullible donors. Further, the schools are not as cheap as they are marketed. If the cost of uniform, exams, the optional breakfast and lunch is accounted for, the cost is over \$ 13 (Ksh.1, 300/-)." The company argued that the news piece was malicious, misleading and inaccurate.
- *Bridge International Academies v Robert Kimani Kiarie*.<sup>55</sup> The defendant in this case was previously employed by BIA. BIA asked the court to restrain the defendant from running the school he owned pending hearing of the case, relying on a non-compete clause in BIA's employment contract. The

court ruled in favour of the defendant and set out that BIA failed to show that it would suffer irreparable loss or injury that would not be adequately compensated by an award of damages.

Other instances show that BIA uses the threat of suing to dissuade its critics. For instance, the company threatened to sue the head of the Complimentary Schools Association in Kenya, even where he raised valid facts.<sup>56</sup> BIA also went so far as facilitating the arrest of an independent researcher trying to find out more about its operations, as was reported by the Washington Post,<sup>57</sup> whereas it had no evidence of the accusations made against him.

Reviews of the company on the Glassdoor.com, a website specialized in recording staff's independent feedback on companies include comments such as: "As many have noted here, the culture isn't great. The management doesn't seem to really care about employees, and would automate them if they could. Layoffs are frequent and sudden, so people are concerned for their jobs all of the time. This makes for a really negative working environment, which is pervasive throughout the organization."<sup>58</sup>

#### *f. Lack of transparency*

Research on BIA has been difficult due to the company's unwillingness to undergo external assessment and their tendency to dismiss critical third-party studies by calling them "fabricated information".<sup>59</sup> Bridge claims it is "a strong advocate of free speech".<sup>60</sup> However, as discussed above, Bridge has attempted to silence its critics, even where they make evidence-based arguments. This lack of transparency was noted by Members of the UK Parliament. During an oral evidence session as part of the United Kingdom's International Development Committee's inquiry with the co-founder of BIA Dr Shannon May, several members of the committee questioned BIA's "host[ility] to independent assessment"<sup>61</sup> and "resistance to inspection".<sup>62</sup> The same is recorded in the Parliamentary Committee's inquiry report.<sup>63</sup>

Sourcing BIA financial records proves a challenge owing to lack of disclosure, making it difficult to obtain essential information about the company's financial information, and raising questions about its tax status – an important point for a company purporting to have a social motive. BIA is a subsidiary of NewGlobe Schools, Inc<sup>64</sup> a company based in Delaware, a well-known tax-haven.<sup>65</sup> One of the main investors in BIA, Novastar,<sup>66</sup> also appears to be based in another well-known tax haven, Mauritius.<sup>67</sup>

Similarly, previously information about enrolment levels was available on the company's website, as shown below. These data are, however, no longer available. The lack of consistent publicly available data on enrolment levels demonstrates a decreasing level of transparency by the company.



The company's lack of transparency is also evident on the day-to-day operations. One of the complainants mentioned: "A teacher once told me if I wanted to secure a scholarship for one of my kids I should talk to the head teacher 'nicely'. They meant I should bribe for funding."<sup>51</sup>

*g. Lack of parental inclusion*

The lack of transparency of BIA also extends to students, parents, and teachers. Complainant 8 stated that: "The Board hawana sauti! [the board has no voice] even though the Academy Manager (AM) invites comments. It's like the Board of Management (BOM) hasn't been given the mandate to act on what is going on in the school. When we raise these issues, we are at times told that we are getting political 'Ati nimepeleka my jubilee (party) issues to the school' [alleging I am bringing up my Jubilee Party issues to the school]. Nothing is being done – we don't get feedback and we just hear that the report is going up the chain to headquarters".<sup>14</sup> The same complainant stated that s/he had problems with the BIA's management: "(...) the manager, he has been around for 5 years and we told him that if he remains we would fight. He addresses parents like he's talking to stones, he doesn't have a good relationship with parents".<sup>14</sup>

*h. Advertising of false or misleading information*

According to the testimonies received, BIA's marketing strategies evidence instances of false advertising and misrepresentation in the ways in which BIA reaches out to parents. As part of its marketing strategy BIA has in instances announced certain incentives to improve enrollment at its schools, such as a waiver of one month's school fees.<sup>16</sup> Several of the complainants represented by EACHRights have disclosed that such promises have not materialized or that the parents did not understand well what was meant:

- Complainant 6: "My concerns with BIA were first that when they marketed it to us they said that they would provide free lunch to the children. Initially they did but later they would have us pay."<sup>20</sup>
- Complainant 8: "A lot of promises that yield to nothing. When school fees were raised in 2014 we were told that laptops and a school bus would come. We were given scholarship numbers – like a till or lottery number but nothing came. You are told you will get free uniform, then you go to the school and have your child measured. But we never got anything".<sup>14</sup>
- Complainant 5: "In my opinion, BIA is just a 'big name'. You see all these adverts on TV about how it's a good school but that is not the case on the ground."<sup>51</sup>

Misleading marketing may also come from what the company does not disclose. Bridge for instance heavily communicates its supposed success in KCPE (the end of primary exam), however, the company does not indicate that it has used techniques such as additional test training to improve results. The New York Times reported that in preparation for the Kenya national exams, teachers said that BIA asked some students to repeat a year, while "the rest were taken to a residential cram school and prepped for the test by teachers who flew in from the United States".<sup>16</sup>

*i. Excessive working hours*

As an employer, BIA fails to enforce reasonable working conditions, particularly, fair working hours. BIA employment contracts stipulate working hours that surpass national law stipulations with no mention of overtime compensation. Research has revealed that in BIA schools in Kenya, teachers are required to

work 6 days a week, for about 57-65 hours.<sup>68</sup> A teacher's 2016 contract indicates that they must work six days a week, from Monday to Saturday. They must also work on Sundays when required.<sup>69</sup> According to a copy of a BIA Academy Employee Handbook, teachers are expected to report to school at 6:55 am and leave at 5:30 pm from Monday to Friday. On Saturdays they work from 7:25 am to 2:30 pm. An academy manager has even longer hours working between 6:40 am to 5:30pm on weekdays and 7:10 am to 2:40pm on Saturday. This amounts to 57 and a quarter working hours for the teachers and around 62 working hours for the academy managers.<sup>70</sup>

According to complainant 3: "We work too much. Schools closed in October and we worked through November and December resting only on the 25 and 26, and on Sundays. We work all other days doing marketing. Teaching hours are too long. We work from 8am-5.20am with only one break of 10-20 minutes rest during the day, from 9.45-9.55am and lunch is for 40 mins. You cannot rest! You're supposed to be teaching while standing for the full 40 minutes. I recommend that Bridge should use the timetable used in the government schools which include two breaks and a games session."<sup>17</sup>

Complainant 7 confirmed: "[We have] very long teaching hours especially if you are a Std. 7 and Std. 8 teacher. You teach up till 6 pm. However, those teaching std. 6-8 they get extra salary. I've taught in other private schools and have been told about public schools and Bridge seems to have very long working hours. The long hours mean you are very tired. We used to have a 5-minute break and lunch time was 30 minutes and we have extra work."<sup>50</sup>

*j. Payment below minimum wage*

Teachers' salaries stipulated in BIA's contracts constitute a questionable labor practice. The salaries are below the country-specific national guidelines on minimum wage. According to a BIA's employment contract and teacher testimonies: "teachers reported salaries ranging between KES. 9,000-12,000 (approx. USD 88.80–118.50) per month, and academy managers' salaries ranging between KES. 10,000 and 15,000 (approx. USD98.70–148.10) per month".<sup>12</sup> Some Bridge staff earn below the minimum amount gazetted for workers in cities which stands at KES. 12,926 since May 2017.<sup>71</sup>

The Constitution<sup>72</sup> provides for the right to fair labour practices including "fair remuneration". In Kenya, salaries for teachers in the private sector do not need to be harmonized with salaries for teachers in public schools, but the law requires that they be paid above the minimum wage.<sup>73</sup> The Wage Regulation Order sets the floor for minimum wages. The Order is enacted under the Labour Institutions Act<sup>74</sup> and further informed by the Employment Act,<sup>75</sup> both of which make it an offence for an employer to not compensate workers in accordance to this law. The Regulation of Wages (General) (Amendment) Order, 2015 set the minimum monthly wage (exclusive of housing allowance) for the lowest cadre staff (general labourers) at KES 10,954.70cts (USD 106.46) in the cities (Nairobi, Mombasa and Kisumu), KES 10,107.10cts (USD 98.23) in the towns and municipalities and KES 5,844.20cts (USD 56.79) in all other areas.<sup>76</sup> In May 2017, these rates were revised pursuant to the Regulation of Wages (General) (Amendment) Order, 2017.<sup>77</sup> The latest regulations set the minimum wage (exclusive of house allowance) for the lowest cadre at KES 12,926.55cts (USD 125.62) per month in the cities, KES 11,926.40cts (USD 115.90) per month in the towns and municipalities, and KES 6,896.15cts (USD 67.02) per month in all other areas.<sup>77</sup> Finally, the Order also provides for the rate of overtime payable to the employee. For time worked more than the normal number of hours per week the employee should receive 1.5 times the usual hourly rate and for time worked on the employee's normal rest day or public holiday twice the usual hourly rate should be paid.<sup>78</sup> These rates do not appear to be applied for BIA's staff overtime.

According to Complainant 2: "They pay us on time but the payment is low. The last contract we signed was in 2013. They are waiting until the minimum wage bill is gazetted. On Labour Day an announcement was made, ordering an increase by 18% in our wage. BIA said they will not increase the pay until it is gazetted. They sent us this notice on the nook."<sup>15</sup>

This situation thus harms both the complainant teachers directly and the general public, due to the systematic violation of labor law. Furthermore, there does not appear to be any trade union for Bridge staff.

#### *k. Other labour issues*

Several other issues reflect unfair labour practices, and a system where by BIA puts an extraordinary amount of pressure on its employees.

BIA sued a former employee alleging that he violated the non-compete clause in his employment contract which provided that the employee would not operate, run, or be employed in a school or any other business, whether directly or indirectly, which is in competition with BIA for two years after the termination of his employment. In dismissing the suit, the court noted that BIA did not give any evidence in support of their claims and no suffering, loss or damage was demonstrated.<sup>79</sup> There are also at least seven separate cases before the Employment and Labour Relations Court of Kenya instituted by former employees of BIA and by BIA itself. Two other cases are before the Commercial and Admiralty court.<sup>80</sup>

The following issues were raised by the complainants regarding working conditions, and the pressure put on them by the company:

- Complainant 3 stated: "My first issue is about the marketing process: we usually run marketing outreach during the holiday. We do it every day in the same community, with the same parents. It is the same people you go to and they talk to you so badly and it's demotivating. But if you do not get the expected number enrolled pupils then you are threatened that the school will be closed down."<sup>17</sup>
- Complainant 2 stated: "We were given targets to reach 67 pupils per teacher, during the outreach exercise. Where do we find these students? The Academy improvement manager then issues threats, telling us that we have been given up to March 2018 and that they will close the school or terminate the teachers should the number of pupils not increase. This from the same community where they have chased pupils, some of whom could not do their exams because they didn't have money. Yet all the blame comes to the teacher. They deduct [Kshs.] 500 per pupil if they find you with pupils who are not allowed in class. They deduct this amount regardless of the amount owed by the parent. (...) If you complain you are terminated. There was a time some teachers in Nairobi complained about their salaries and working conditions and they got terminated. But they have since raised salaries. Around this time, we received threats from above: an announcement was made in the nook. We were told to not give any information to anyone asking about the school. But the working conditions have not improved, even the seats we use. The seats are called 'sit – tall' and they are uncomfortable."<sup>15</sup>
- Complainant 7: "Teachers are involved in marketing during the holiday and if one doesn't do it then they don't get their salary. One of Bridges Quality assurance officers came up with rules that made us leave the school. The QUASO created some by-laws – such as enrolling 50 new pupils or signing

up at least 20 pupils per day even if there are in other schools. We were forced to do this marketing not to do things willingly. You could market from 6-6pm so that you could get the right number of pupils. If one didn't meet the quota a subtraction would be made from their salary. Teachers are required to take parents' names and contacts which will be used in follow-ups. If you get a parent with 5 children then you are lucky, they are counted per head. This has however changed of late and they started counting them per parent.”<sup>50</sup>

- Complainant 4: “We were always in conflict with the academy manager. She used to engage in arguments with me and she called the area manager. The area manager submitted a report about me. I don't even know what it was saying and as I was waiting for my salary in Mid-April, I didn't receive anything. When I called them to find out what was happening I was told that I was not in the system. I was not paid and no one sat me down to speak to me about my termination after I was told I was out of the system. I didn't follow it up I just decided to look for another job and have found another job at a nearby school. I decided to go to HQ to demand a termination letter in July and demanded my terms of service, they told me to wait for it. And I keep asking the new academy manager if my letter has arrived and it hasn't. One of their policies is that those terminated after serving for more than two years should receive a pay-out.”<sup>13</sup>

An analysis of the complaints made on *Glassdoor.com* also confirms the serious allegations mentioned above, including discrimination against local staff, unfair dismissal, and excessive working hours.<sup>81</sup>

### III. IFC Performance Standard Violations

#### a. IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts.

##### *Failure to comply with national law and regulations regarding schools*

The IFC Performance Standards on Environmental and Social Sustainability indicate that IFC's clients “will comply with the applicable laws and regulations of the jurisdictions in which it is being undertaken, including those laws implementing host country obligations under international law”.<sup>82</sup> IFC's Guidance Note 1 states that “PS1 supports the responsibility of the private sector to respect human rights, which exist independently of state duties to respect, protect, and fulfill human rights.”<sup>83</sup> This covers human rights that are in the International Bill of Rights. The complaint therefore also makes reference to those where relevant.

The IFC failed in its due diligence and its follow-up role to ensure BIA respects and complies with national laws and regulations, as well as international laws. These violations included failure to meet school registration requirements, curriculum and teacher regulation, and respect for freedom of speech as it is specified on the IFC's performance standards.

BIA has claimed to be ‘partnering’ with the Government to solve problems of legality and regulations.<sup>84</sup> Purported negotiations, however, do not create justification for failure to comply with prescribed national laws. The Ministry of Education in Kenya (MoE), in a letter dated 29 June 2017 addressed to BIA, states that the company continues to operate in breach of national standards and regulations.<sup>85</sup> BIA's illegal practices have also been noted by the UK Parliament's International Development Committee (IDC). In a recent letter published on 27 April 2017 following an inquiry of several months into UK development aid to education,<sup>86</sup> the Chair of the IDC stated: “the evidence received during this inquiry raises serious questions about BIA's relationships with governments, transparency and

sustainability.”<sup>87</sup> Such concerns were also raised by UK Conservative Member of Parliament, Paul Scully who described the relationships between BIA and governments as “Bridge failing to develop productive and respectful relationships with the Governments in the countries that it is operating in.”<sup>88</sup>

According to international law, the State of Kenya has the duty to regulate private education. States have the obligation “to protect” human rights, which entails the obligation “to regulate private actors to ensure that the services they provide are accessible to all, are adequate, are regularly assessed in order to meet the changing needs of the public and are adapted to those needs”.<sup>89</sup> This obligation also been confirmed by the UN Guiding Principles on Business and Human Rights.<sup>90</sup> For the protection of the right to education, this obligation is particularly clear. Article 13.3 of the International Covenant on Economic, Social and Cultural Rights<sup>91</sup> and Article 29 of the UN Convention on the Rights of the Child,<sup>92</sup> both of which Kenya is a party to, require States to define minimum educational standards. Several recently adopted UN Human Rights Council Resolutions have further required States to regulate private education providers. The 2017 resolution urges States to “pu[t] in place a regulatory framework for education providers, including those operating independently or in partnership with States, guided by international human rights obligations, that establishes, at the appropriate level, *inter alia*, minimum norms and standards for the creation and operation of educational services, addresses any negative impact of the commercialization of education and strengthens access to appropriate remedies and reparation for victims of violations of the right to education”.<sup>93</sup>

#### *Discrimination and marginalization*

Performance Standard 1 specifies that IFC’s clients should identify individuals and groups that may be “directly or disproportionately affected by the project because of their disadvantage or vulnerable status”.<sup>94</sup> Once individuals or groups are identified, IFC’s clients must prevent adverse impacts to fall disproportionately over these individuals or groups. IFC’s Performance Standards understand “disadvantage or vulnerable status” as a condition that originates from “an individual’s or group’s race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status”.<sup>95</sup> Guidance Note 1 further states that “business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to.”<sup>96</sup> Equality and non-discrimination on the grounds outlined below are also strongly protected under international human rights law<sup>97</sup> as well as under the Constitution of Kenya.<sup>98</sup> BIA has the responsibility to respect both. Kenya’s Basic Education Act, section 34 further outlines that: “A school or a person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture.”

The complainants assert that BIA’s activities do not respect children’s right to education without discrimination and that they violate the above-mentioned standards. This statement is true especially for the most marginalized children including children of families living in poverty and children with disabilities. Through its operations, BIA interferes with the rights of marginalized children to access education by discriminating them based on their geographic location, economic power, literacy levels, and disabilities.

BIA claims to reach underserved families and they cite their unique position to reach the poorest children as one the BIA’s model’s main advantages. For example, BIA’s website lists the poverty headcount ratio of Bridge communities as \$1.60 a day per person.<sup>99</sup> Nevertheless, research has shown that students accessing BIA schools are not the most disadvantaged.<sup>12</sup> The Chair of the UK Parliament’s IDC: concluded on the above-mentioned inquiry: “We would not recommend DFID make any further

investments in Bridge until it has seen clear, independent evidence that the schools produce positive learning outcomes for pupils. Even at that time, we would want to see a compelling case for any further DFID support, including evidence to prove that Bridge was providing education to the very poorest and most marginalized children which was not being provided elsewhere.”<sup>100</sup>

Performance Standard 1 further states that “where individuals or groups are identified as disadvantaged or vulnerable [which is defined to include physical or mental disability], the client will propose and implement differentiated measures so that adverse impacts do not fall disproportionately on them and they are not disadvantaged in sharing development benefits and opportunities.”<sup>101</sup> As described above, BIA has not taken measures to ensure inclusion of marginalized children.

#### *Transparency and false advertising*

According to PS 1, IFC’s clients should establish and maintain a procedure of external communications with the public including methods to (i) receive and register external communications from the public; (ii) screen and assess the issues raised and determine how to address them; (iii) provide, track, and document responses, if any; and (iv) adjust the management program, as appropriate.<sup>102</sup> This means the information should be accessible and understandable to all stakeholders and affected communities.<sup>103</sup>

The facts mention on the harm section detail how BIA has conducted communication that could be misleading for parents and the general public about the impact of its operations. The information that should be disclosed in this case, such as clarity about the costs, or the fact that residential cram school are organized and could impact learning outcomes, are not confidential information.

#### *Violation of freedom of expression*

The Constitution of Kenya guarantees the freedom of expression under article 33. This freedom is also protected under article 19 of the International Covenant on Civil and Political Rights. Performance Standard 1 requires that consultations “be free of external manipulation, interference, coercion, or intimidation”<sup>104</sup> This means that it “must be free of intimidation or coercion, and not be influenced by outside pressure or monetary inducements” and that IFC clients “should allow critics to express their views, and enable various groups to speak out freely with equal opportunity, so as to facilitate a full debate involving all viewpoints.”<sup>105</sup>

There are at least three known cases where Bridge has sued individuals or organizations and sought to restrict their expression, including in cases where the person or organization sued were stating known facts (summarized under section II). For instance, BIA threatened to sue the head of the Complimentary Schools Association in Kenya for defamation. In this case, Bridge considered defamatory the affirmation that the company received funds from the World Bank and was not complying with the curriculum although these points are known and are evidenced in this complaint. There is no known suit on this case.

#### *b. IFC Performance Standard 2: Labor and working conditions*

IFC Performance Standard 2 (PS2) recognizes that the pursuit of economic growth must be balanced with protection for basic rights of workers. Objectives enshrined in PS2 include “to establish, maintain, and improve the worker-management relationship”, “promote the fair treatment, non-discrimination and equal opportunity of workers, and compliance with national labor and employment laws”, and “promote safe and healthy working conditions, and to protect

and promote the health of workers.”<sup>106</sup> Moreover, PS2 states that working conditions including working hours and payment should comply with national law.

*Excessive working hours and payment below minimum wage*

The Kenyan Constitution 2010, pertaining labour relations, stipulates that every person has a right to reasonable working conditions<sup>107</sup> including working hours. The Basic Education Regulations 2015<sup>108</sup> provides the official working hours in institutions of basic learning. These regulations stipulate that the official operating hours for all day public or private institutions shall be Monday to Friday 8.00 a.m. to 3.30 p.m. for class hours; and 3.30 p.m. to 4.45 p.m. for co-curriculum activities. The Regulation of Wages (General) Order 1982 additionally states that the normal working week shall consist of not more than 52 hours of work spread over six days of the week.<sup>109</sup> BIA violations of working hours have been recorded under Section II above. Similarly, it has been shown that the salary of some staff members is below the lowest legal minimum wage.

*Fair treatment of staff and termination*

According to PS2, “The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to any aspects of the employment relationship, such as recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices”<sup>110</sup> The facts laid out on section II reveal unfair and/or discriminatory treatment of staff.

*c. IFC Performance Standard 4: Community Health, Safety, and Security*

According to Performance Standards 4 (PS4) the IFC’s client responsibility is to avoid or minimize the risks and impacts to communities’ health and safety, and security that may arise from project related-activities, with particular attention to vulnerable groups.<sup>111</sup> PS4’s Guidance Note states that buildings accessible to the public should be designed, constructed, and operated in full compliance with local building codes, local fire department regulations, and others.<sup>112</sup> Education facilities are cited as a type of building that must follow such regulations.

The Safety Standards Manual for Schools sets the minimum standards for health in institutions of basic learning,<sup>113</sup> drawing from section 19<sup>114</sup> of the Basic Education Act. The Safety Manual provides guidance on the nature of school infrastructure including specific direction on how school buildings should be constructed.<sup>115</sup>

These norms have not been followed by some Bridge schools, to the point that public authorities have sued some schools and school managers over the lack of respect of health and safety standards, as described in section II. In a similar case in Uganda, health and safety concerns were one of the main reasons for the Ugandan authorities to close BIA schools in the country.

#### **IV. Attempts to Resolve the Issue Thus Far**

Since 2015, various individuals and civil society organizations including EACHRights have alerted the IFC and the general public about the issues raised above:

- In May 2015, more than one hundred organizations, including 16 organizations in Kenya, released a joint open statement addressed to the president of the World Bank, Jim Kim.<sup>116</sup> The statement

expressed concerns about the World Bank's support for the development of a multinational chain of low-fee profit-making private schools targeting poor families, Bridge International Academies (BIA). This statement came as a response to a recent speech of Jim Kim in which he praised BIA for its poverty alleviation efforts.

- In August 2017, 174 organizations, including 14 Kenyan organizations released a statement calling on investors – including the IFC – to cease support for Bridge International Academies.<sup>117</sup> The statement cited evidence and analysis raising concerns on BIA's transparency, relationship with governments, labor conditions, and breach of educational standards.
- In February 2018, following the August 2017 statement, 91 organizations sent a letter addressed to Jim Kim asking to stop financing BIA (Appendix D).

In all these instances, the IFC's reply denied the evidence brought forward:

- In August 14, 2015, (Appendix E) the World Bank's first response indicated that more evidence was needed, and that the World Bank was "launching a rigorous, independent impact evaluation of the Bridge International Academies program in Kenya". However, as of March 2018, no additional evidence has been made public. No consultation about the scope or methodology of the study has been done with affected stakeholders or civil society. There was no adequate public information about the above-mentioned impact evaluation study until November 2017.<sup>118</sup>
- In March 2018, the IFC responded to the second letter (Appendix F) by dismissing the evidence.

Civil society organizations also met with the World Bank and IFC teams in several instances to raise these issues, including on October 2016 when an EACHRights officer travelled to Washington, DC and met in person with IFC and World Bank representatives. To our knowledge, there has never been a concrete step taken to address the issue. Moreover, the study proposed by the World Bank promised over three years ago and not delivered yet, will not address many concerns not related to quality of education such as the respect of the rule of law, transparency, and labor conditions. Finally, the situation has deteriorated between 2015 and 2018, with Bridge schools being closed in Uganda in 2018 and several new lawsuits to intimidate critics being issued.

The above-mentioned information and statements are public. BIA has been regularly informed of the concerns raised, as evidenced by the many responses made by the company. It has been difficult to engage more directly with BIA due to the climate of fear and the lack of evidence-based engagement by the company. Following the many suits engaged by the company against critics, and even the possibility of arrest by the police the complainants have opted to not engage directly. BIA has not acknowledged nor taken steps to address the issues described in this complaint.

Aside of the relations between EACHRights and other civil society members and BIA or the IFC, the governments of Kenya and Uganda have attempted to address some of the issues raised on this complaint. For example, the government of Kenya has worked for over four years with BIA seeking to ensure the legality of BIA's operation. This work has been unsuccessful so far and BIA has used these open negotiations to gain time and expand in size, which makes it more difficult to enforce regulations as the company uses the pupils and families as a pressure point to escape critics.<sup>119</sup>

The complainants consider the evidence presented on this complaint as proof of the lack of good faith in BIA's engagement therefore making further discussions unhelpful.

## V. Conclusion and Requested Next Steps

The complainants believe a compliance review to be the best avenue to address BIA's negative impacts. The IFC has failed to meet its due diligence and supervisory obligations with respect to its decision to invest in and oversee the activities of its client, despite several documented warnings by various stakeholders. Bridge's activities are contrary to the goals of the World Bank Group to eliminate extreme poverty and boost shared prosperity, and they gravely and urgently violate fundamental laws and principles in Kenya. The complainants believe the situation has reached a point where redress is needed rapidly, with the risk otherwise that BIA undermines on the long term individual lives, community coherence, and the development of the education system. As one complainant explained: "At first [I] wanted negotiation but [I] also want justice"<sup>50</sup>

As the result of the compliance review, the complainants hope the IFC will (1) withdraw its equity investment on BIA; and (2) make changes that will lead its future investments in education to respect human rights and national laws and standards.

## VI. Annex: Are low-fee private school the most effective education investment?

Investments in and support to low-fee and commercial private schools including BIA have attracted the condemnation of the United Nations, with many recommendations made by UN bodies in charge of monitoring the implementation of human rights treaties<sup>120</sup>, underscoring concerns about BIA's negative impact on human rights<sup>121</sup>.

In an unprecedented statement made public in June 2016, the United Nations Committee on the Rights of the Child (CRC) also expressed concerns about the UK government's "funding of low-fee, private and informal schools run by for-profit business enterprises"<sup>122</sup>. On the basis of evidence presented to it and its dialogue with the UK Government, the Committee considered that funding to such schools could undermine children's rights, and it recommended that the UK, "refrain from funding for-profit private schools" and "prioritise free and quality primary education in public schools."<sup>123</sup> In July 2016, the UN Committee on Economic, Social and Cultural Rights (CESCR) similarly expressed "particular concerns" about the UK's "financial support provided (...) to private actors for low-cost and private education projects in developing countries, which may have contributed to undermine the quality of free public education and created segregation and discrimination among pupils and students"<sup>124</sup>.

The former UN Special rapporteur on the right to education, Dr. Kishore Singh, repeatedly highlighted this issue. In one of his reports, he stressed that governments "allowing education to be commercialised" and encouraging "for-profit schools, such as the Bridge International Academies [...] violat[e] these States' international legal obligations to provide free basic education for all"<sup>125</sup>.

The African Commission on Human and Peoples' Rights (African Commission) has equally expressed its deep concerns about the growth and lack of regulation of private schools in Uganda, which could be in violation of the African Charter on Human and Peoples' Rights. The African Commission expressed its worry that "that the increase in the establishment of private schools [...] could result in discrimination against children from low-income households". It requested that the government "regulate the quality of education being provided by private schools" in Uganda<sup>126</sup>. Moreover, during the review of Kenya, the African Commission also questioned the legal status of BIA schools, asking the Government why private school chains, such as BIA, are registered as non-formal schools when they offer formal education<sup>127</sup>.

Despite the World Bank Group's commitment to promote free primary education<sup>128</sup>, the International Finance Corporation (IFC, the World Bank's private sector arm) approved \$162 million in investments for the expansion of fee-charging, for-profit primary and secondary schools (including BIA) worldwide from 2011 to 2015<sup>129</sup>. The IFC has stated that investment in fee-charging private education is a mechanism for poverty alleviation, and its 2013-2015 strategy paper<sup>130</sup> notes investments in private education as complements to public education systems<sup>131</sup>. However, a March 2017 report<sup>129</sup> by RESULTS Educational Fund found that IFC investments in basic education struggle to reach or benefit the poor. The research found that the IFC supported schools were located in close proximity to other public or private schools, suggesting that their location had been determined by market viability and not by the needs of marginalised communities, who tend to live in more isolated areas. Most children in the IFC-supported, for-profit schools were not previously out of school and only 3-6 per cent of children received partial or full scholarships. Although fees in both public and private schools were the main barrier for the poor to access and remain enrolled in basic education, for-profit private schools visited during the research denied access to children who fail to pay fees, with parents often making sacrifices, such as foregoing meals and taking out loans to pay. As a local NGO spokesperson commented: "[it is] a concern that

brings in a human rights issue because you are trading and profiting from the poor". These issues have been raised repeatedly to the World Bank, in particular through the 2015 CSO statement, xcix which responded that it launched "a rigorous, independent impact evaluation of the Bridge International Academies program in Kenya, which will be the first largescale, randomized, controlled trial of fee-paying schools in sub-Saharan Africa."<sup>132</sup>. However, the details and methodology of this evaluation have not been shared publicly nor has it included input from civil society in Kenya or elsewhere.

The evidence presented here establishes serious doubt that it is not and cannot be the solution to the education needs of poor families. Furthermore, the undermining of rule of law, lack of transparency and accountability, and perpetuation of inequalities run counter to the standards and values of many investors. BIA's model is neither effective for the poorest children nor sustainable against the educational challenges found in developing countries.

Report of the UN Special Rapporteur on the right to education, Kishore Singh, Protecting the right to education against commercialization: Like Ghana, Kenya and Uganda too are allowing education to be commercialized and are encouraging for-profit schools, such as the Bridge International Academies. This violates these States' international legal obligations to provide free basic education for all. It also contravenes the Children Act 2001 of Kenya (reinforced by the Basic Education Act 2013), by which every child is entitled to free basic education and the Government is responsible for providing such education.<sup>133</sup>

## VII. Key Resources

1. [2015 Joint Open Statement addressed to the president of the World Bank](#).
2. [August 2017 statement from 174 organizations calling on investors – including the IFC – to cease support for Bridge International Academies](#).
3. [February 2018 Letter to investors to stop financing BIA](#).

## VIII. Appendices

- Appendix A- Letter from Ministry, November 2014
- Appendix B - Letter from KICD, March 2015
- Appendix C - Letter from Ministry, July 2017
- Appendix D - Letter to IFC, March 2018
- Appendix E - Response from IFC, August 2015
- Appendix F - Response from IFC, March 2018
- Appendix G - Bridge School Mathare
- Appendix H - List of Complainants
- Appendix I- Letters of Representation

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